

(FEDERAL MARITIME COMMISSION)
(SERVED FEBRUARY 2, 1990)
(EXCEPTIONS DUE 2-26-90)
(REPLIES TO EXCEPTIONS DUE 3-20-90)

FEDERAL MARITIME COMMISSION

SPECIAL DOCKET NO. 1803

APPLICATION OF U.S. ATLANTIC AND GULF
PORTS/WESTERN MEDITERRANEAN RATE AGREEMENT
AND SEA-LAND SERVICE, INC. FOR THE
BENEFIT OF BEKAERT CORPORATION

Application to waive freight charges of \$107,620.07, granted.

INITIAL DECISION¹ OF JOSEPH N. INGOLIA,
ADMINISTRATIVE LAW JUDGE

This application² is for permission to waive \$107,620.07 of freight charges arising out of seventeen (17) shipments of Spools and/or Bobbins, Empty from Atlantic and Gulf Ports to Bilbao, Spain.

The tariff involved in this proceeding is U.S. Atlantic and Gulf Ports/Western Mediterranean Rate Agreement (the

¹ This decision will become the decision of the Commission in the absence of review thereof by the Commission (Rule 227, Rules of Practice and Procedure, 46 CFR 502.227).

² The application was filed on November 2, 1989, within the 180 day statutory period set forth in section 8(e), Shipping Act, 1984. The November 2, 1989, date is evidenced by the Commission's "date received" stamp. The application contains a "Certificate of Mailing" statement which is signed but no date is set forth. Since the November 2nd date satisfies the statute, it was used.

"Conference"), F.M.C. No. 1, from: United States Atlantic and Gulf Ports, and from U.S. Coastal or Interior Points via such ports, to: Ports of Italy, Spain, Portugal and Mediterranean Coast of France, and to all points in Italy, Spain, Portugal, France, Switzerland, Austria, Czechoslovakia and Hungary via such ports (as per rule 1). Sea-Land Service, Inc. (Sea-Land), is a member of the Conference.

In February of 1989, the tariff contained a rate for Spools: Bobbin, Empty to: Bilbao of \$36.50 WT, minimum 20.3 tons per H/H container.³ Effective April 4, 1988, the Conference reissued the pertinent tariff page (95B) and mistakenly published an expiration date of May 4, 1989, for the \$36.50 WT rate.⁴ When Sea-Land discovered the error it requested the Conference to correct it. The tariff was amended effective July 14, 1989, to republish the intended \$36.50 WT rate level.⁵

Between May 5, 1989, and July 13, 1989, Sea-Land carried the seventeen (17) shipments of empty spools to Bilbao, Spain, from Atlantic and Gulf ports.⁶ The applicants now seek permission to waive the differences between the freight charges due under the various N.O.S. (Not Otherwise Specified) rates on file when the

³ Application, Exhibit No. 1.

⁴ Application, Exhibit No. 2.

⁵ Application, Exhibit No. 4. It should be noted that a prior amendment of June 7, 1989 (Exhibit No. 3) was filed with a \$44.00 rate, which included a \$7.50 general rate increase. The applicants assert a \$36.50 WT rate was intended to apply to the seventeen shipments involved here.

⁶ Application, Exhibit No. 5.

shipments took place, or \$139,201.57, and those due under the intended rate of \$36.50 WT, or \$31,581.50, such difference being \$107,620.07.⁷

Section 8(e) of the Shipping Act, 1984, permits the Commission to waive collection of freight charges where it appears there was an error in a tariff of a clerical nature or an error due to inadvertence in failing to file a new tariff. Here, the Conference mistakenly published an expiration date of a rate which both the carrier and the shippers intended to apply to the shipments involved here.⁸ The error clearly falls within the ambit of section 8(e).

The application conforms to the requirements of Rule 92(a), Special Docket Applications, Rules of Practice and Procedure, 46 CFR 502.92(a), and therefore, after consideration of the application, the exhibits attached to it, and the entire record, it is held that:

1. There was a clerical or administrative error which resulted in the failure to have timely filed a tariff containing a rate of \$36.50 WT, for Spools and/or Bobbins, Empty, moving from United States Atlantic and Gulf Ports to Bilbao, Spain, which rate would have been in effect had the error not been made.

⁷ Application, Exhibit No. 5, page 1, contains a detailed summary of the freight charges involved.

⁸ The original application contains an incomplete narrative of the exact nature of the error made. By letter dated January 8, 1990, the applicant set forth a second narrative which clearly describes the facts surrounding the error. While those facts are somewhat intricate they establish that there was a genuine error justifying the holding made in this decision.

2. The waiver will not result in discrimination among shippers,⁹ and there is no evidence that any carrier or ports would suffer discrimination should the application be granted.

3. Prior to applying for the waiver the applicant filed a new tariff which sets forth the rate upon which the waiver should be based.

4. The application was filed within 180 days from the date of the first shipment.

Wherefore, it is,

Ordered, that permission is granted Sea-Land to waive freight charges totalling \$107,620.07, in favor of the shipper, Bekaert Corporation and/or the consignee, Munoz y Cabrero, S.A., as is appropriate,¹⁰ and it is,

Further Ordered, that the carrier and/or Conference publish in the pertinent tariff the following notice:

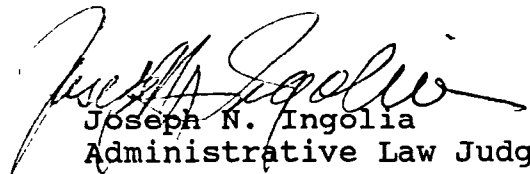
Notice is given as required by the decision of the Federal Maritime Commission in Special Docket No. 1803, that between May 6, 1989,¹¹ and July 13, 1989, inclusive, the rate on Spools and/or Bobbins, Empty from U.S. Atlantic and Gulf Ports to Bilbao, Spain is

⁹ The applicant states that there were no other shipments of the same commodity during the period involved here.

¹⁰ The waiver should favor the payor of the freight, who is either the shipper or consignee. Since the application is not clear on this point the alternative "and/or" is set forth.

¹¹ Although the mistake caused the rate to expire on April 4, 1989, under the holding in Application of Sea-Land Corp., etc., for the Benefit of Forwarding Services, Inc. as Agent for Pana-York Shipping Corp./Frito-Lay, Special Docket No. 1412 (F.M.C., June 9, 1986), only those shipments which began on or after May 6, 1989 (180 days from the date of the filing of the application), would be protected insofar as discrimination is concerned.

\$36.50 WT, min. 20.3 tons per H/H cntr., for purposes of waiver or refund of freight charges, subject to all other applicable rules, regulations, terms and conditions of said rate and this tariff.


Joseph N. Ingolia
Administrative Law Judge

Washington, D.C.
February 2, 1990

(S E R V E D)
(April 9, 1990)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

SPECIAL DOCKET NO. 1803

APPLICATION OF U.S. ATLANTIC AND GULF PORTS/WESTERN
MEDITERRANEAN RATE AGREEMENT AND SEA-LAND SERVICE, INC.
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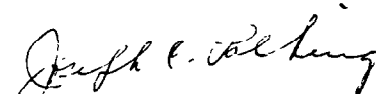
ORDER OF ADOPTION

Upon review on its own motion the Commission has determined to adopt the Initial Decision issued in this proceeding.

THEREFORE, IT IS ORDERED, That the Initial Decision of Administrative Law Judge Joseph N. Ingolia served February 2, 1990, is adopted by the Commission; and

IT IS FURTHER ORDERED, That this proceeding is discontinued.

By the Commission.


Joseph C. Polking
Secretary